IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 558 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAHADEVPURI RATANPURI

Appearance:

1. Criminal Appeal No. 558 of 1992

MR A.J. DESAI, LD APP for Petitioner

MR BY MANKAD for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 22/08/2003

ORAL JUDGEMENT

1. This appeal under section 378 of Criminal

Procedure Code is directed against the order of acquittal dated 9-3-1992 passed by Learned Chief Judicial Magistrate, Bhuj at Kutch in Criminal Case No. 832 of 1990.

The facts leading to the filing of the present appeal by the appellant State shortly stated are; that the accused Mahadevpuri Ratanpuri was doing the business of selling eatables and sweetmeats in the name of Rajesh Bhelvala by keeping larry in the city of Bhuj; that on 6-8-1989 at about 18.30 hrs Food Inspector of Bhuj Municipality Mr. M.C. Patel came to the larry of Mahadevpuri Ratanpuri near Dingeshwar Mahadev Temple; that at that time in the said larry eatable, i.e. chocolate burfi with silver leaf applied on it was kept for sale. From the said sweets in presence of the panchas burfi weighing 600 grams with silver leaf applied thereon was purchased by the Food Inspector for the purpose of getting the same analysed by the Public Analyst, after paying the price for the purchase of the said eatable; that cash memo was also obtained for the same and written notice as required under Rule 12 was also given to the vendor Mahadevpuri Ratanpuri; that the eatable purchased was divided into three parts and kept in three different glass bottles and the same was packed and seal of the Municipality was applied on the opening of the each of the bottles which was tightly closed with the cap; that necessary panchnama was drawn for the purchase and taking of samples in three different bottles of the burfi with silver leaf applied thereon, and the slips containing signatures of the panchas pasted on the bottles; that the sample was sent to the Public Analyst and according to the prosecution the report revealed that by applying the silver leaf on the chocolate burfi Mahadevpuri Ratanpuri has violated the provisions of Food Adulteration Act and thereby committed the offence under the said Act, and on that basis complaint for violating the provisions of Section 7 (1) and 2 (1) (A), (A) (C) and Rule 5 and thereby committing offence under section 16 (1A) of the Prevention of Food Adulteration Act.

2. The accused appeared and pleaded not guilty to the accusations. The prosecution in order to bring home the guilt to the accused adduced oral as well as documentary evidence. The accused contended that the burfi with silver leaf was not purchased from him by the Food Inspector of the Bhuj Municipality. He has also questioned the report of the Public Analyst as not correct, further contending that he has been falsely implicated in the case. The trial Court appreciating the evidence on record, including the report of the Public

Analyst and also the provisions of the Act, found the accused not guilty for the offence alleged and recorded the acquittal in favour of the accused. It is this acquittal which is assailed in the present appeal by the appellant State.

3. Exhibit-28 is the copy of the report by the Public Analyst in Form-III. Perusal of the same suggests that on 14-8-1989 Mr. M.C. Patel, Food Inspector, Bhuj Municipality purchased the sample of chocolate burfi with silver leaf. It is further suggested that on examination of the sample sent to the Public Analyst it was found that there was no artificial sweetening agent present in the sample, whereas the test for silver was in the negative. It is suggested that the test for aluminium was positive. Thus according to the report by the Public Analyst the sample of burfi with silver leaf in fact did not contain any silver but the same was found to contain aluminium.

4. Mr. Mankad, Learned advocate for the respondent has placed reliance on the decision in the case of STATE OF GUJARAT VS. RASIKLAL AMEDBHAI SHAH & ANR, 1993 (1) GCD, pg. 591. In the said case before the trial court the accused had pleaded guilty and on the basis of the plea of guilt he was awarded sentence of imprisonment till rising of the court, and also sentenced to pay fine of Rs.500/-; and in default to undergo imprisonment for one month. The State preferred appeal and prayed for enhancement of the sentence awarded to the convict. In the appeal, Learned Single Judge of this Court held that the report of the sample of 'Dudhi Halva' taken and sent to the Public Analyst was found not to contain any silver but contained only aluminium. There was no report or evidence that aluminium foil was injurious to health and on these facts Learned Single Judge held that the sample could not be held an article of food adulterated and set aside the conviction and the sentence awarded.

Reliance is also placed on the decision in the case of IQBAL MUSABHAI HUNANI Vs. STATE OF GUJARAT & ANR, 1993 (1) [Vol. XXXIV (1)] GLR pg. 430, wherein the the petitioner-convict before the High Court had sold Khajur and it was stated to be quoted with silver leaf. The Public Analyst in his report has nowhere stated that the main article of food, i.e. Khajur was found adulterated. It has been observed that there was no evidence on record to the effect that aluminium leaf was injurious to health, the use of such leaf for quoting khajur would not make that article of food adulterated.

5. In the instant case what has been sold to the Food Inspector is chocolate burfi quoted with apparently silver leaf, but on analysis the Public Analyst found the same to be aluminium leaf and not silver leaf. There is no evidence adduced by the prosecution to the effect that aluminium leaf was injurious to health, the use of such leaf for quoting burfi would not make the article of food adulterated. The main article of food in the instant case is burfi, silver leaf probably appears to have been used to quote presumably for decorative purpose. Instead of silver leaf what was found was aluminium leaf. In absence of any evidence or report to the effect that aluminium leaf is injurious to the health, it cannot be said that use of aluminium leaf to quote burfi was in any manner injurious to heath of its consumers. In my opinion, the present case is squarely covered by the decisions rendered in the case of State Vs. Rasiklal Amedbhai Shah AND Iqbal Musabhai Hunani Vs. State (supra).

6. In the above view of the matter, the acquittal recorded by Learned Trial Judge is well founded and does not call for any interference, and the present appeal being devoid of merit is liable to be dismissed and acquittal recorded by the trial court confirmed.

7. In the result appeal is dismissed.

Dt: 22-8-2003 (N.G. Nandi, J)

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